Zapmedia Services, Inc. v. Apple, Inc. Doc. 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

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U.S. DISTRICT COURT
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ZAPMEDIA SERVICES, INC.,
a foreign corporation,

Plaintiff,

v.

APPLE, INC.,
a foreign corporation.

Defendant.

No. 2:08cv104

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW, ZapMedia Services, Inc. ("ZapMedia"), by and through its undersigned counsel, and files its Complaint for Patent Infringement against the above-named Defendant and for its cause of action hereby states:

THE PARTIES

1. ZapMedia is a corporation organized and existing under the laws of the State of Georgia and having its registered place of business at 2 Ravinia Drive, Suite 790, Atlanta, Georgia 30346.

2. Apple, Inc. ("Apple") is a California corporation with its principal office located at 1 Infinite Loop, Cupertino, California 95014, and a principal place of business at 12535 Riata Vista Circle, Austin, Texas 78727. Apple may be served by service upon its registered agent, C T Corporations System, at 350 N. St. Paul Street, Dallas, Texas 75201. Apple is authorized to do business in the State of Texas, and regularly conducts such business by way of sales of goods and services, including the goods and services accused of infringement in this case, within the State of Texas and within this judicial district.

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JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code.

4. Subject-matter jurisdiction over ZapMedia's claims is conferred upon this Court by 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (patent jurisdiction).

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and §1400(b).

PATENT INFRINGEMENT

6. On March 26, 2006, U.S. Patent No. 7,020,704 (the "`704 patent"), a copy of which is attached hereto as Exhibit "A," was duly and legally issued by the United States Patent and Trademark Office. ZapMedia is the owner by assignment of all right, title and interest in and to the `704 patent, including all right to recover for any and all past infringement thereof.

7. On March 11, 2008, U.S. Patent No. 7,343,414 (the "`414 patent"), a copy of which is attached hereto as Exhibit "B," was duly and legally issued by the United States Patent and Trademark Office. ZapMedia is the owner by assignment of all right, title and interest in and to the `414 patent, including all right to recover for any and all past infringement thereof.

8. Upon information and belief, Apple has in the past and continues to infringe each of the '704 patent and the '414 patent by making, using, selling and/or offering to sell, in this judicial district and elsewhere in the United States, products and services which are covered by at least one claim of each of the '704 patent and the '414 patent.

9. ZapMedia is entitled to recover money damages from the defendant to compensate for the infringement described above, in an amount of no less than a reasonable royalty.

10. Upon information and belief, Apple will continue to infringe the '704 patent and the '414 patent unless enjoined by this Court.

11. As a consequence of the infringement complained of herein, ZapMedia has been irreparably damaged to an extent not yet determined and will continue to be irreparably damaged by such acts in the future unless Apple is enjoined by this Court from committing further acts of infringement.

12. Apple's patent infringement is continuing and is willful because of Apple has continued its infringing practices with knowledge of ZapMedia's patent rights and in a manner that is objectively reckless.

PRAYER FOR RELIEF

WHEREFORE, ZapMedia prays for entry of judgment that:

1) Apple has infringed the '704 patent;

2) Apple has infringed the '414 patent;

3) Apple account for and pay to ZapMedia all damages and costs of ZapMedia caused by Apple's patent infringement, including payment of damages in the amount of no less than a reasonable royalty;

4) ZapMedia be granted permanent injunctive relief pursuant to 35 U.S.C. § 283 enjoining Apple, its officers, agents, servants, employees and those persons in active concert of participation with it from further acts of patent infringement;

5) ZapMedia be granted pre-judgment and post-judgment interest on the damages caused to it by reason of Apple's patent infringement;

6) The damages awarded to ZapMedia should be trebled after the jury determines the infringement in this case was willful;

7) Costs and attorney's fees be awarded to ZapMedia, as this is an exceptional case;

8) ZapMedia be granted such further and additional relief as this Honorable Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

ZapMedia demands trial by jury on all claims and issues so triable.

This 12th day of March, 2008.

Respectfully submitted,

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